

REMARKS

Applicants submit this Amendment in response to the Office Action dated October-9, 2007. In this Amendment, Applicants amend claim 15, 17, and 28 to correct claim objections raised by the Examiner and to better define the claimed subject matter. Applicants respectfully submit that no new matter has been submitted. After entry of this Amendment, claims 15-30 remain pending.

In the Office Action:

- (a) The Examiner objected to the abstract for not complying with proper format;
- (b) The Examiner objected to the oath/declaration for not properly stating the inventors' duty to disclose information known to be material to patentability;
- (c) The Examiner objected to claims 15-30 under 35 U.S.C. §112, ¶ 2, as being indefinite;
- (d) The Examiner rejected claims 15-17, 19, and 24-26 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent Publication No. 2003/0028250 to Reiley et al. ("Reiley"); and
- (e) The Examiner rejected claims 18, 20-23, 29, and 30 under 35 U.S.C. § 103(a) as being unpatentable over Reiley in whole or in view with U.S. Patent No. 6,626,944 to Taylor ("Taylor").

Abstract

In this Amendment, Applicants submit a new abstract to obviate the informalities raised by the Examiner. Applicants respectfully submit that the new abstract is proper and respectfully request the Examiner to withdraw this objection.

Oath and Declaration

The Applicants will submit a newly executed oath and declaration that properly states the Applicants duty to disclose information know to be material to patentability. At the time of filing this Amendment, the new oath and declaration was not fully executed.

Claims Rejections Under 35 U.S.C. §112, ¶2

In this Amendment, Applicants amend claims 15 and 17 to correct the claim informalities raised by the Examiner. Applicants respectfully request that the Examiner withdraw these objections.

35 U.S.C. §§ 102(b) and 103(a) Rejections

Applicants respectfully submit that the prior art, including Reiley and Taylor, does not disclose---*inter alia*---the recitations provided in the newly amended claims.

Furthermore, modifying Reiley as proposed by the Examiner would render the device of Reiley unsatisfactory for its intended purpose. *See* M.P.E.P. 2143.01V.

Applicants amend independent claim 15 to recite, “wherein the groove comprises a first side and a second side, wherein between the first side and the second side the groove is adapted to receive the spinous process of said lumbar vertebra . . . wherein a first end of the strap is passed into the first opening of the first side of the groove, wherein the second end of the strap is passed into the second opening of the second side of the groove, wherein the bottom end face [of the body of the spacer] comprises a longitudinal housing, said longitudinal housing extends orthogonal to the groove, and wherein the longitudinal housing is concave to receive and rest directly on a top portion of the convex sacral vertebra.”

Nothing in the prior art discloses “a groove adapted to receive the spinous process [on a top end face of the body and] a longitudinal housing [on a bottom end face of the body that] is concave to receive and rest directly on a top portion of the convex sacral vertebra [and that] *extends orthogonal to the groove*,” as recited in the newly amended claims. *Author's emphasis added.*

Although Reiley discloses a prosthesis 36 with a chimney 42 that “is configured to receive the spinous process 22 of the vertebral body,” there is nothing in Reiley that could be construed as the claimed longitudinal housing that is “concave to receive and rest directly on a top portion of the convex sacral vertebra [and that] extends orthogonal to the groove.” *See* Reiley, ¶80 and Figs. 4 and 38. Further, although Taylor discloses a

prosthesis with a cord 8 for wrapping around a corresponding spinous process—as with Reiley—there is nothing in Taylor that could be construed as the claimed longitudinal housing that is “concave to receive and rest directly on a top portion of the convex sacral vertebra [and that] extends orthogonal to the groove.” See Taylor, col. 4, lines 20-33.

Assuming Examiner’s *arguendo* that the “longitudinal housing” of Reiley is orthogonal to “groove” 42, this “longitudinal housing” is not “concave to receive and rest directly on a top portion of the convex sacral vertebra [and that] extends orthogonal to the groove.”

In addition to not teaching, suggesting, or disclosing these claim recitations, the claims are unobvious over the prior art for at least one more reason. Specifically, modifying Reiley as proposed by the Examiner would render the device of Reiley unsatisfactory for its intended purpose.

In the Office Action, the Examiner states, “It would have been obvious to one skilled in the art at the time the invention was made to construct the device of Reiley et al. with a fastening device in the form of a strap that is received in a hold on the body of the implant in view of Taylor. Applicants respectfully disagree.

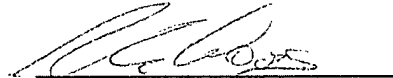
When implanted and connected to prosthesis 36, the fixation elements [screws or nails] 52 of Reiley “serve to anchor the prosthesis 36 in place.” The strap of Taylor, on the other hand, would not provide the necessary anchoring ability as fixation elements 52 of Reiley. The mechanical support that is provided by pedicle screws or nails is different from the support provided by a flexible strap. When a pedicle screw or nail is attached to the bone, the screw or nail is rigidly fixed to the bone and provides mechanical support to the prosthesis in all directions. A flexible strap, on the other hand, will only provide support when a tensile load is applied to the strap. The strap will not provide mechanical support when a compressive load or torsional load is applied to the strap, for example. To simply replace the fixation elements 52 of Reiley with a strap would render the prosthesis of Reiley unsatisfactory for its intended purpose, because the strap would not provide the necessary “anchoring” support necessary for the prosthesis disclosed in Reiley. See M.P.E.P. 2143.01 V.

For these reasons, Applications respectfully request the Examiner to withdraw his rejections under (d) and (e), above.

Applicants also respectfully submit that the application is in condition for allowance.

The Examiner is invited to contact the undersigned at the phone number indicated below with any questions or comments, or to otherwise facilitate expeditious prosecution of the application.

Respectfully submitted,
Pasquet, et al.

A handwritten signature in black ink, appearing to read "Michael Woods", is written over a horizontal line.

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